

## 1 HOUSE BILL NO. 750

2 INTRODUCED BY R. BROWN, BITNEY, FORRESTER, KEENAN, MANGAN, MOOD, A. OLSON, SHEA,  
3 F. THOMAS, YOUNKIN

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TEMPORARILY~~ INCREASING THE TAX ON CIGARETTES;  
6 ~~REVISING THE ALLOCATION OF CIGARETTE TAXES; TEMPORARILY REVISING THE INSIGNIA DISCOUNT;~~  
7 TRANSFERRING UP TO \$29 MILLION FROM THE COAL SEVERANCE TAX TRUST FUND TO THE  
8 GENERAL FUND FOR PURPOSES OF APPROPRIATION; APPROPRIATING FUNDS FOR CERTAIN STATE  
9 PROGRAMS FOR THE 2004-05 FISCAL BIENNIUM; AMENDING SECTIONS 16-11-111, 16-11-114, AND  
10 16-11-119, MCA; AND PROVIDING AN EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 **Section 1.** Section 16-11-111, MCA, is amended to read:

15 **"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) (a) A tax on the purchase  
16 of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed  
17 and must be precollected by the wholesaler and paid to the state of Montana.

18 (b) The tax on each package containing 20 cigarettes is: 18 cents on each package containing 20  
19 cigarettes and, when packages contain

20 —— (i) beginning July 1, 2003, through June 30, 2005, 43 50 cents; and

21 —— (ii) after June 30 BEGINNING JULY 1, 2005, 18 25 cents; AND

22 —— (iii) BEGINNING JULY 1, 2013, 18 65 CENTS.

23 (c) Whenever a package contains other than 20 cigarettes, a the tax on each cigarette equal to is 1/20th  
24 of the tax on a package containing 20 cigarettes.

25 (b)(d) The tax computed under subsection (1)(a) subsections (1)(b) and (1)(c) applies to illegally  
26 packaged cigarettes under 16-11-307.

27 (2) The tax imposed in subsection (1) does not apply to quota cigarettes.

28 (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all  
29 cigarettes entering a Montana Indian reservation.

30 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to

1 a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or  
 2 credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe  
 3 or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the  
 4 shipment date forfeits the refund or credit.

5 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of  
 6 preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval  
 7 prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the  
 8 quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in  
 9 this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and  
 10 delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a  
 11 federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been  
 12 filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must  
 13 be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota  
 14 allocations are not transferable between quota periods or between reservations.

15 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the  
 16 refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on  
 17 the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation  
 18 at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs  
 19 or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."  
 20

21 **SECTION 2. SECTION 16-11-114, MCA, IS AMENDED TO READ:**

22 **"16-11-114. Insignia discount.** Each licensed wholesaler is entitled to purchase an insignia at full face  
 23 value less the following percentage of the face value upon payment for the insignia as defrayment of the costs  
 24 of affixing insignia and precollecting the tax on behalf of the state of Montana:

25 (1) ~~2.26% from July 1, 2003, through June 30, 2005, 4.36% from July 1, 2005, through June 30, 2013,~~  
 26 ~~and after that date 6%~~ 1.77% for the first 2,580 cartons or portion thereof ~~of 2,580 cartons~~ purchased in any  
 27 calendar month;

28 (2) ~~1.51% from July 1, 2003, through June 30, 2005, 2.91% from July 1, 2005, through June 30, 2013,~~  
 29 ~~and after that date 4%~~ 1.19% for the next 2,580 cartons or portion thereof ~~of 2,580 cartons~~ purchased in any  
 30 calendar month; and

1           (3) ~~1.13% from July 1, 2003, through June 30, 2005, 2.18% from July 1, 2005, through June 30, 2013,~~  
2 ~~and after that date 3% 0.89%~~ for purchases in excess of 5,160 cartons in any calendar month."

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4           **Section 3.** Section 16-11-119, MCA, is amended to read:

5           **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111 must  
6 be allocated as follows:

7           (1) The ~~amount of 11.11% following amounts~~ AMOUNT OF 3.05% of the cigarette tax collected on each  
8 package of cigarettes must be deposited in the state special revenue fund to the credit of the department of  
9 public health and human services for the operation and maintenance of state veterans' nursing homes:

10           ~~(a) from July 1, 2003, through June 30, 2005, 4.65% 3.92%; and~~

11           ~~(b) after June 30 BEGINNING JULY 1, 2005, 11.11% 7.84%; AND~~

12           ~~(c) BEGINNING JULY 1, 2013, 11.11%.~~

13           (2) The ~~amount of 73.04% following amounts~~ must, in accordance with the provisions of 15-1-501, be  
14 deposited in the state general fund:

15           ~~(a) from July 1, 2003, through June 30, 2005 2013, 88.72% 80.16% 82.19%; and AND~~

16           ~~(b) after June 30 BEGINNING JULY 1, 2005, 73.04% 60.01%; AND~~

17           ~~(c)(B) BEGINNING JULY 1, 2013, 73.04% 92.59%.~~

18           (3) The ~~amount of 15.85% following amounts~~ AMOUNT OF 4.36% must, in accordance with the provisions  
19 of 15-1-501, be deposited in the long-range building program account provided for in ~~17-7-205;~~

20           ~~(a) from July 1, 2003, through June 30, 2005, 6.63% 5.59%; and~~

21           ~~(b) after June 30 BEGINNING JULY 1, 2005, 15.85% 11.19%; AND~~

22           ~~(c) BEGINNING JULY 1, 2013, 15.85%.~~

23           ~~(4) FROM JULY 1, 2003, THROUGH JUNE 30, 2005 2013, THE AMOUNT OF 10.33% 10.4% MUST BE DEPOSITED~~  
24 ~~IN THE COAL SEVERANCE TAX PERMANENT FUND PROVIDED FOR IN 17-5-703, AND FROM JULY 1, 2005, THROUGH JUNE~~  
25 ~~30, 2013, 20.96% MUST BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND PROVIDED FOR IN 17-5-703."~~

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27           **NEW SECTION. Section 4. Fund transfer from coal severance tax trust fund.** (1) There is  
28 transferred up to \$29 million from the coal severance tax trust fund to the general fund prior to June 30, 2004,  
29 for appropriation. The office of budget and program planning shall determine the timing of transfers and the  
30 amount to be transferred subject to the \$29 million limit.

1           (2) PRIOR TO MAKING THE TRANSFER AUTHORIZED IN THIS SECTION, THE BUDGET DIRECTOR SHALL ENTER INTO  
 2 AN IRREVOCABLE CONTRACT WITH THE DIRECTOR OF THE DEPARTMENT OF REVENUE THAT INCORPORATES THE  
 3 PROVISIONS OF [SECTION 6] AND 16-11-119(4). THE TRANSFER AUTHORIZED IN THIS SECTION MAY NOT BE MADE UNTIL  
 4 THE IRREVOCABLE CONTRACT HAS BEEN EXECUTED.

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 6           NEW SECTION. SECTION 5. TRANSITION. ALL WHOLESALERS, DISTRIBUTORS, AND RETAILERS SHALL PAY THE  
 7 DIFFERENCE IN TAX BETWEEN THE FORMER TAX RATE AND THE NEW TAX RATE ON THAT PORTION OF INVENTORY SUBJECT  
 8 TO TAX HELD BY THEM ON JULY 1, 2003, THAT EXCEEDS ALL INVENTORY SUBJECT TO TAX HELD BY THEM ON THE LAST DAY  
 9 OF THEIR MOST RECENTLY CONCLUDED INCOME TAX REPORTING YEAR.

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 11           NEW SECTION. SECTION 6. PLEDGE. IN ACCORDANCE WITH THE CONSTITUTIONS OF THE UNITED STATES  
 12 AND THE STATE OF MONTANA, THE STATE PLEDGES THAT IT WILL NOT IN ANY WAY IMPAIR THE OBLIGATIONS OF ANY  
 13 AGREEMENT BETWEEN THE BUDGET DIRECTOR AND THE DEPARTMENT OF REVENUE CONCERNING THE LEVY, COLLECTION,  
 14 AND DEPOSIT OF CIGARETTE TAXES.

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 16           NEW SECTION. Section 7. Appropriations. The following amounts are appropriated as biennial  
 17 appropriations from the general fund for the fiscal biennium beginning July 1, 2003, and ending June 30, 2005:

18           (1) ~~\$29 million~~ \$4,625,445 to the department of public health and human services;

19           (2) ~~\$5 million~~ \$8,194,680 to the Montana university system;

20           (3) ~~\$11 million~~ \$6,630,586 to the department of corrections; and

21           (4) \$5,126,448 TO THE OFFICE OF PUBLIC INSTRUCTION;

22           ~~(4)(5)~~ \$4 million \$3,600,000 to the judiciary;

23           (6) \$2,034,940 TO THE LEGISLATIVE BRANCH;

24           (7) \$581,197 TO THE GOVERNOR'S OFFICE;

25           (8) \$6,404 TO THE COMMISSIONER OF POLITICAL PRACTICES;

26           (9) \$1,071,153 TO THE DEPARTMENT OF REVENUE;

27           (10) \$135,075 TO THE DEPARTMENT OF ADMINISTRATION;

28           (11) \$19,653 TO THE APPELLATE DEFENDER COMMISSION;

29           (12) \$511,867 TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS;

30           (13) \$823,858 TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY;

